



TOWN OF NEW WINDSOR

ZONING BOARD OF APPEALS

Regular Session

Date: JANUARY 26, 2004

AGENDA

7:30 p.m. – Roll Call

Motion to accept minutes of January 12, 2004 meeting as written.

PRELIMINARY MEETINGS:

1. **CENTRAL HUDSON G&E (04-04)** Request for Interpretation and/or Variance for expansion of nonconforming use, exceeding 30% (48-24 B 3) for expansion of Substation at Union Avenue in an **R-4 Zone (12-1-48) (PB #03-12)**
2. **EDWARD NIXON (04-05)** Request for:
4 ft. Rear Yard Setback - for existing detached 8'X12' shed (48-13-A-1-B)and;
6 ft. Front Yard Setback – for existing 12' X 12' front deck (R-4 bulk tables Use 7-E) and;
1.2 ft Side Yard Setback – for existing detached 8' X 8' well house (48-14-A-1-B)

All at 20 Hill View Drive in an **R-4 Zone (58-3-2)**
3. **DONALD FASSBENDER (04-07)** Request for 5.5 ft. Rear Yard Setback (48-14, A(1b) for existing shed at 8 Musket Place in an **R-4 Zone (45-3-1)**
4. **NEW WINDSOR EQUIPMENT RENTAL (04-08)** Request for Use Variance to permit storage & handling of aggregate products in an **R-4 Zone (adjacent to PI Zone)** at 14 Argenio Drive (9-1-108& 55)
5. **GARY & THERESE LAMICA (04-06)** Request for:
9 ft. Side Yard Setback and;
2 ft. Rear Yard Setback (48-14, A(1b) for existing shed and;
Interpretation for Single-Family Home with two kitchens in Single-Family Zone

All at 1 Buttermilk Drive in a **CL-1 Zone (78-1-3)**

PUBLIC HEARINGS:

6. **ANDREW COFFEY (03-59)** Request for 23 ft. Front Yard Setback for existing front deck (Use: E-8 Bulk Tables) at 233 Spruce Street in an **R-4 Zone (24-4-22)**
7. **NICHOLAS RONSINI, JR. (04-01)** Request for 7 ft. Maximum Building Height (48-14 A(1)(2) for proposed garage at 546 Temple Hill Road in an **R-4 Zone (6-1-32)**
8. **GOLDSTAR REAL ESTATE (04-03)** Request for 2.7 ft. Side Yard Setback for proposed single family home (48-12; R-1 Column F-5) at 2 Pieter's Court in an **R-1 Zone (54-1-74.4)**

TOWN OF NEW WINDSOR
ZONING BOARD OF APPEALS
JANUARY 26, 2004

MEMBERS PRESENT: MICHAEL REIS, VICE CHAIRMAN
LEN MCDONALD
STEPHEN RIVERA

ALSO PRESENT: MICHAEL BABCOCK
BUILDING INSPECTOR

ANDREW KRIEGER, ESQ.
ZONING BOARD ATTORNEY

MYRA MASON
ZONING BOARD SECRETARY

ABSENT: MICHAEL KANE, CHAIRMAN
JOSEPH MINUTA

REGULAR MEETING

MR. REIS: I'd like to call the January 26, 2004
meeting of the New Windsor Zoning Board to order.

APPROVAL OF MINUTES DATED: JANUARY 12, 2004

MR. REIS: Motion to accept the January 12 minutes as
written.

MR. MC DONALD: So moved.

MR. RIVERA: Second it.

January 26, 2004

2

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. REIS	AYE

PRELIMINARY MEETINGS:

CENTRAL HUDSON GAS & ELECTRIC (04-04)

MR. REIS: Request for interpretation and/or variance for expansion of nonconforming use, exceeding 30% (48-24 B 3) for expansion of substation at Union Avenue in an R-4 zone.

Lois R. Phillips, Esq., Mr. Gary R. Aber and Mr. Huynh Nguyen appeared before the board for this proposal.

MS. PHILLIPS: My name is Lois Phillips, I'm an attorney with Hiscock & Barclay in Albany, New York. I represent Central Hudson Gas and Electric with respect to the application pending before this board. With me tonight are members, representatives from Central Hudson, as well as their project engineers, Chazen and Company. We have submitted a packet to you requesting an interpretation of your code and in the alternative an area variance. Central Hudson Gas and Electric is an electric corporation under Public Service Law and is a gas and electric company as defined in New York State law. As such, Central Hudson furnishes electric service throughout the New Windsor area and surrounding environs pursuant to a franchise which was granted by the Town of New Windsor in 1905. As a public utility, Central Hudson has an absolute right and duty under the Public Service Law to provide electric service to this location. Pursuant to its franchise, Central Hudson further has the right and duty subject to reasonable regulations to erect and maintain the proposed transmission facilities, including the substation. New York in general permits localities to adopt zoning ordinances and codes which govern electric utilities, however, no municipality may nullify or interfere with the utility's rights and duties to erect and maintain transmission facilities. And the provision of the law is an attempt to balance the locality's zoning rights with the utility's obligations to provide and furnish

electric power and gas to the communities. Therefore, municipalities can regulate but not prohibit installation, alteration and expansion of transmission facilities where such alteration is necessary to the maintenance of sufficient service or to provide sufficient electric capacity. As part of its regular planning process, Central Hudson has determined that additional electric transmission facilities are needed in this area in order to increase reliability of an electric service and to meet the growing needs for electric load in the area. In looking at your code, it appears that there is some confusion about what the approvals required are needed for the alteration to the Union Avenue substation. This is generally I believe because your code provides that public utilities transmission distribution facilities will be governed by Article 7 of the Public Service Law and as such you would not see a so-called Article 7 project coming before the local board such as yourself for approval. Article 7 relates to transmission facilities which have a higher level of capacity or voltage, 125 kilovolts, I believe, or higher for the system. This system does not meet that requirement. The substation is 115. So that leaves an ambiguity or a question with respect to how to provide in the Town of New Windsor. Your code does define public utilities as a central services under Section 48-37, 48-37 provides that a central services include the construction and alteration by public utilities of transmission facilities. In looking over other provisions of the code, the central services are also exempt from certain provisions or requirements under the code. Here the structural alterations that are necessary are in the interest of public safety. If you recall, for example, in August of last year, when we had a power outage throughout this area and New York State part of the concerns raised were not merely that there wasn't sufficient electric capacity to watch television that night but you had a disruption of a central public service and emergency facilities. Without sufficient power, people

on wells are unable to obtain water. Without electric service if that happened here in New Windsor tonight there would be an inability for electric or for heat. In the summertime, in August, there was a disruption of other ventilation systems, including air conditioning. In addition, we have a disruption for primary emergency service providers such as fire departments, police departments, ambulance, hospital, so electric service, the adequate delivery of electric service and sufficient capacity is a critical public safety concern. As such, Central Hudson is seeking your interpretation under Section 48-24, paragraph B subparagraph 4 of your code that its structural alterations to the Union Avenue substation fit within the provisions of that section that say that such alterations is necessary in the interest of public safety are exempt from regulations of non-conforming uses. The Union Avenue substation was constructed in 1954 and 1955, well before the adoption of the zoning ordinance zoning code. As such, we looked at the applicable use schedules and determined that in the R-4 zone as with several other residential zones, public utilities are not allowed as a matter of right nor are they allowed by special permit. So the Union Avenue substation exists as a non-conforming use as determined by the building inspector. There is a provision under Section 48-24 paragraph B, subparagraph 3 that limits the alteration or expansion of a non-conforming use. The threshold says that you cannot alter or expand that use by greater than 30 percent. The interpretation again we're asking that we're a public utility which is exempt from that restriction under your Section 48-24 B 4. If this board determines that the exemption from the limitation on altering a non-conforming use is not or does not apply to Central Hudson's proposed alterations, in the alternative, we would then ask the board to provide an interpretation on how to calculate the 30 percent increase under the restrictive section. During the discussions that the company had with the planning board, there was a question as to how that

particular square footage would be calculated. This is approximately a 6.9 acre parcel and we're looking for guidance as to if we're subject to the restrictive provision do we calculate the increased area of the use by looking at the square footage of the building that's proposed which is a controlled building, or do we calculate that based upon the square footage of the steel structures that would be constructed holding the transmission lines and transformers or do we add the two of them together, the square footage of the steel structure and the square footage of the control building. It's a little complicated because now I'm going to give you a third alternative and that would be if in fact you decide that Central Hudson is not exempt from these restrictions, and you then decide that the proposed construction exceeds your 30 percent restriction, then Central Hudson would be asking for an area variance to allow construction greater than 30 percent and to allow this construction of a structure which exceeds your height limitations of 18 feet. I know that's a little bit complicated and so if anyone has questions about what we're looking for or you'd like me to try and clarify it, I'd be happy to. I'd like to turn over the rest of the presentation for tonight's meeting to Central Hudson to explain what the meat is for this particular expansion and also what's specifically proposed for the project.

MR. HGUYEN: I'm Huynh Nguyen, engineer from Central Hudson and I'm project engineer for this project. I would like to explain why Central Hudson needs to do this project. The Union Avenue substation was built in 1955, roughly about 49 years ago and the improvements have been made over the years and by 2000, the total number of circuits at the substation is one circuit and in 2002, we installed the last provision of the distribution circuit to support the area. The study by Central Hudson in 2001 forecasts that with the rate of growth in this area at 2.7 percent by summer 2004, the growth in the area will be 97 percent of the substation

capacity. Furthermore, the study indicates that if the growth in this area grow rapidly, by summer of 2005, the growth in this area will exceed 100 percent of the substation capacity. Central Hudson also reviewed all the available transmission and distribution capacity at the different substations around this area and they have determined that the Union Avenue substation is the select choice because we have the land available, we also have the transmission facility available. With these alteration of this substation, we will add one more transformer and then will provide five more additional distribution circuits to support growth in this area.

MR. RIVERA: How much more land is going to be required to have these additional--we're concerned with setbacks with other properties cause you'll notice this borders private property, so our concern is of course we're going to have, we're going to hear at public hearing, that's the concern that I have at this moment.

MR. ABER: If you look at your site plan which is labeled as SP2, you'll see that all the setbacks have been identified on that plan, minimum hundred foot setback from the front property line, which is a reconstructed property line. After Central Hudson relinquished a piece of property to the County for the widening of the Union Avenue, you'll see the side yard setback there of 134.8, I believe, and you'll see the rear setbacks also.

MR. MC DONALD: This new area, is this basically like what we have now, just more, like you say, you're going to have five more circuits that you're going to be able to provide in that new area?

MR. NGUYEN: Yes.

MR. MC DONALD: Basically the same as what you've got now.

MR. NGUYEN: Yes, sir.

MR. ABER: My name is Gary Aber, Director of Utility Design for Chazen Companies. And we have prepared various plans for Central Hudson showing the different conditions and it starts with the existing conditions, you see a site plan there which we were just talking about shows the footprint of the alteration, the various setbacks in bulk table, it showed the new requirements and how we've met those, shows a link between the existing portion and the expansion portion of that and then we go into the utility grading, which shows you a little bit more of a detail of what's going to be required of Central Hudson. In the design of the layout of this site, we have tried to balance out the cuts and fills as close as possible on the property so that the fill pad that they're creating there is virtually a balance of what they're cutting out of the side slope and using to fill the lower side. It's requiring them to build two retaining walls on the property, one on the upslope side. On the downslope side, it would not have been required other than the fact that there was an adjoining wetland to the rear and to not impact that in any way, shape or form, they've seen fit to go ahead and build an additional retaining wall to house the footprint for this alteration. Are there any specific questions as to the layout?

MR. REIS: Just a point of reference if I can refer to you, Mike, is this one site one section, block and lot?

MR. BABCOCK: Yes, that's how I understand it.

MR. REIS: Being it's one lot, why do we have to expand these new facilities that you're adding so far away from the existing plant, the existing transmission lines?

MR. ABER: The existing transmission lines run in the rear of this parcel, it's a long narrow strip. If you go back to SP1 up in the upper right-hand corner, see the left-hand of the two small views up in the left-hand corner, you'll see that parcel, it's an L-shaped parcel, so the rear portion is the transmission line that comes in and feeds the parcel. And if you switch to SP3, you'll see to the right of that plan the footprint of what exists there now, you'll see a gray shaded area which is a wetland and that kind of circumvents the adjacent or contiguous expansion of just pulling down a fence and widening the footprint as it stands but joins slightly into the rest of Central Hudson's property.

MR. REIS: Part of your interpretation or variance request is the exceeding of the 30 percent of the property. Michael, how are we, it doesn't seem to me just looking at this without calculating this each piece doesn't seem like it's 30 percent.

MR. BABCOCK: Well, that's one of the questions. The first question is are they subject to that law and that's one of the, that's one of their questions. The second thing is how do you want the 30 percent calculated. Basically, the 30 percent talks about structures and if each one of these units is a structure, we would, they're asking whether they would calculate that into the 30 percent or just the building that they're putting on the spot. The building is very small in size.

MR. ABER: The building is 880 square feet.

MR. BABCOCK: Yeah, so the building is very small in size but if you calculated there the units that are there each one of them you'd probably exceed the 30 percent.

MR. MC DONALD: The five switch gears if we included

that with the building that would be on a pad--they're on a pad?

MR. ABER: Yes.

MR. REIS: That's referenced on SP3, that irregularly shaped area?

MR. ABER: Yes, that's the envelope of all of the super structure and equipment structures that would sit below them.

MR. REIS: You determined through your engineering that we must do this, there's no choice?

MR. NGUYEN: Yes because we don't have any other transmission facility to increase the load, the capacity of the station.

MR. REIS: You cannot go up at your existing super structure that's there, you must expand to the left or right or behind?

MR. NGUYEN: Yes.

MR. REIS: Cannot take it anyplace else, you made those determinations because this is for whatever reason?

MR. NGUYEN: We already look at the different options but just like they don't have land available and the transmission is not available and if we build somewhere else, we have to build a whole transmission system to feed this station so that we can have the substation built to provide the, to support the loads that are there.

MR. REIS: Have you made a determination if this is acceptable to the ZBA and the planning board, have you made a determination stretching out our growth pattern for the next 10 or 20 years?

MR. NGUYEN: Well, this is a study by the planning section at Central Hudson, a study 10 year, 20 year growth in this area, based on the study from 1998 through 2002, we estimate the load growth about 2.7 percent, but if the load grows rapidly then the condition will be different. So based on the load growth, 2.7 percent by summer 2004, the load in this area will be 97 percent of the substation capacity.

MR. REIS: You'll be utilizing a hundred percent of your maximum output, I understand that, assuming that this is okay and acceptable to the Town with this additional power that you have available based on our current growth patterns and growth of the Town, is this going to be obsolete in 10 or 15 years?

MR. NGUYEN: We estimate that this substation with total 15 distribution circuit will support growth in this area from 10 to 20 years, that depends on how this area grows. It's not really a solid way to say because load growth in this area can change at any time.

MR. REIS: You would guesstimate that you have a minimum of 15 years would you say?

MR. NGUYEN: I estimate from 10 to 20 years, I mean, average but if the load grows faster that will be different.

MR. REIS: So we need to determine the proposed power control center which is less than 900 square feet plus the proposed overhead utility area, I don't know what that square footage is, do you have that number?

MR. BABCOCK: We have need existing and the proposed to see what the difference in 30 percent is, Mr. Chairman, if you look at SP2, they have some, it says Town of New Windsor Zoning District, residential R-4 public utility and they have a required lot area of ten acres and

they're proposing 1.21 acres. If you look over on the map, they're actually determining their setbacks from the small 800 square foot building and I'm not sure that we would do that or go from that pad. If you notice, the pad is 17 feet from the property line but the building's 43, so they took their setbacks from the building and not this pad. I don't know if the board--

MR. MC DONALD: So 134.8 side is from the corner of the building?

MR. BABCOCK: Yeah, you see 135 feet comes from the property line to the building, that's not the pad though.

MR. REIS: The pad is the entire darkened area, Mike?

MR. BABCOCK: Yes and see the fence around it, the thick darker area is the retaining walls and the lines with the X is the fence and then the pad is the entire area, that's where the new equipment would go.

MR. REIS: This is, this a concrete pad that whole area?

MR. NGUYEN: No, not the whole area is concrete, it's on gravel and some location where the structure's going.

MR. BABCOCK: Where the structure's going is concrete.

MR. MC DONALD: So we're just covering as far as concrete is concerned just where the five circuits are going to be and the control building?

MR. ABER: Yes.

MR. REIS: Can you tell us about the retaining wall itself, is that a concrete abutment?

MR. ABER: The westerly retaining wall is a concrete poured in place wall and the easterly retaining wall is a gabion stone filled wall.

MR. REIS: How high is the wall to the west?

MR. ABER: If you look on SP3, you'll see elevations on the wall, all one wall at different points. If I was to take the front corner, you'd see the top of the wall is an elevation of 299 and the inside bottom of the wall is 287.9, so just make it just over 11 feet at that point. If you looked at the gabion wall on the opposite front corner the top of the wall is 288.3 and the outside bottom is 282, so make it just over 6 feet.

MR. REIS: Are there going to be plantings on the exterior of the wall to kind of give it a buffer?

MR. ABER: It's Central Hudson's intention to satisfy the planning board with whatever screen plantings or lattice within the fence that's required. The other thing that you can see on SP3 you'll see there's a cut in the existing tree line that allows strictly for the driveway coming in off Union Avenue and the appurtenances so it leaves the buffer in the front and also to the west side, you'll see where the connector walkway between the two portions of the expansion you'll see a cut in the tree line there also to continue the shroud that's there.

MR. BABCOCK: As you see on the denial, there's no numbers as far as what they meet and what they don't meet and the reason for that is because until the board tells us which direction to go, we'll have to come up with a square footage of each one of the units and the square footage of the new one and tell you whatever they are over the 30 percent. So I think tonight if the board can make a decision if they feel that Central Hudson is exempt from that code, if you feel that, and that's the interpretation they no longer have to go

anywhere, they just go back to the planning board and get their site plan approval and move on. If the board determines tonight that they should seek relief of the 30 percent, if they're over it, then we would have to do that calculation and also the calculations of the square footage, the lot area, the lot widths and so on and so forth and come up with a list of area variances that we believe they would need and then come back to this board with those. So I think tonight we really need to just have that answer so that we can come up with those calculations.

MR. REIS: Gentlemen, do you have any other questions? Do you feel that we can vote on this as an interpretation or do you feel that we should go the distance and get all the variances?

MR. MC DONALD: I think we ought to go personally as an interpretation, in my view, it's kind of academic, they're going to build it whether we let them or not.

MR. KRIEGER: The problem is as I see it the zoning board is powerless to act without a public hearing, regardless of whether you call it an interpretation or area variance, I think the board is required to have a public hearing. After you hear from the public, then you're going to be faced with the same questions as they were previously presented, whether or not it's exempt as a central service public utility or whether it's, whether they're not exempt or whether or not they're entitled to area variances but you have to hold a public hearing before you can make that.

MR. REIS: Even with an interpretation?

MR. KRIEGER: Yes.

MR. MC DONALD: Accept a motion?

MR. REIS: Yes.

MR. MC DONALD: Make a motion we set them up for a public hearing on their request.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. REIS	AYE

MR. BABCOCK: Could you suggest we have the applicant do those numbers?

MR. REIS: I would recommend it.

MR. BABCOCK: So we have both of those.

MR. REIS: For the sake of time and to expedite your process, I would suggest that you have those numbers so we know what we're dealing with I personally am leaning towards an interpretation so--

MR. KRIEGER: That way they only have to have one public hearing.

MR. BABCOCK: If they were to fail the interpretation, the board could move on to do the area variances.

MR. KRIEGER: Without holding another public hearing right there and then.

MS. PHILLIPS: Do you suggest that we work directly with the building department to establish exactly what calculations?

MR. REIS: You need that criteria so you can move forward, right.

MS. PHILLIPS: And do you have a date for the public hearing?

MR. REIS: You have to submit the papers.

MS. MASON: If you read this, it tells you what to do.

MR. REIS: Thanks very much.

EDWARD NIXON (04-05)

Mr. Ken Gill appeared before the board for this proposal.

MR. REIS: Request for 4 ft. rear yard setback for existing detached 8' x 12' shed (48-13-A-1B) and 6 ft. front yard setback for existing 12' x 12' front deck (R-4 bulk tables, Use 7-E) and 1.2 ft. side yard setback for existing detached 8'x 8' well house (48-14-A-1-B) all at 20 Hill View Drive in an R-4 zone.

MR. GILL: I'm Ken Gill, I'm here for Mr. Nixon and he bought this house from his father, the elder Mr. Nixon who passed away. These structures were all up there at that time and they have been up there for approximately 16 years, except for the front entry, the deck in the front which was put up 10 or 12 years ago to replace an existing entry. So he's asking for variances on as-built situation, he's asking for these three variances as I read them. He feels that the percentage isn't very bad, also been no complaints from any neighbors. There's a big vacant property in the back and there are trees between the building and the road so it's pretty much inoffensive.

MR. MC DONALD: These have been up?

MR. GILL: Yes.

MR. MC DONALD: I heard you say no complaints.

MR. GILL: No complaints thus far, right.

MR. REIS: These structures don't go over any kind of easements?

MR. GILL: No, there was one initially on the road, I'm not even sure about it, but the road was given to the Town or it was a private road that went over it when

the sewer went in, I guess.

MR. RIVERA: Creating any water hazards?

MR. GILL: No, that's a high and dry piece of property actually.

MR. MC DONALD: Do we have to take these individually Michael?

MR. BABCOCK: Well, we wrote them up individually, you can or you don't, if you want to do them altogether, you could.

MR. KRIEGER: Specify in the motion that you're taking them in block and if you're going to set him up for a public hearing in block.

MR. MC DONALD: That's what I would do.

MR. REIS: Any other questions?

MR. RIVERA: Accept a motion?

MR. REIS: Yes, please.

MR. RIVERA: I make a motion that we set up Mr. Edward Nixon for a public hearing and vote on these as a block for the requested 4 foot rear yard setback for and existing detached 8 x 12 shed, 6 foot front yard setback for existing 12 x 12 front deck and the 1.2 foot side yard setback for an existing detached 8 x 8 well house at 20 Hill View Drive.

MR. MC DONALD: Second it

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE

January 26, 2004

19

MR. REIS

AYE

January 26, 2004

20

DONALD FASSBENDER (04-07)

No show.

NEW WINDSOR EQUIPMENT RENTAL (04-08)

Mr. Jerry Argenio appeared before the board for this proposal.

MR. REIS: Request for use variance to permit storage & handling of aggregate products in an R-4 zone. (adjacent to PI zone) at 14 Argenio Drive.

MR. ARGENIO: Ladies and gentlemen, honorary members of the zoning board, please don't think ill of me for bringing my two young children to the meeting, but I have a wife who's pregnant and sick tonight and she was dozing off as I was on my way out the door. Normally, my uncle would be representing this application, Jerry Argenio, he's one of my partners at Hudson Valley Asphalt, but he's away so he asked me if I would represent this application tonight and I'm here to do it. I think I'd like to take the opportunity just to give you folks a little bit of background on the history of this 2.35 acres in the back of our property just off 32 on Argenio Drive. We're looking for an area variance for the 3.25 acres in the back, if I may, Route 32 is up here, Gallagher Trucks is up here, you'd make the left on Ruscetti road, come down about a hundred feet, make a left on Argenio Road that's our facility back there. We have a bituminous concrete manufacturing plant, concrete plant and contracting operation is there as well. Do you folks have photos in your files?

MR. REIS: Yes, we do.

MR. ARGENIO: About three years ago, one of the byproducts from the manufacture of the blacktop and the concrete, we have left over concrete, we have left over blacktop and we have left over aggregates, so what we began to do quite a few years ago was combine the aggregates and blend them together in the back of our property here so the product doesn't have to get

landfilled, we make Item 4 product, we sell it to blacktop guys who pave driveways and that sort of thing and we don't have to landfill it, we're taking raw materials that are a waste product of our current operations, combining them with some other materials we're making a usable, salable product. We started running out of space, so we approached the Town, the Town owns about 30 acres more or less back here between us and what is the back of Ducktown near Bradford Avenue, so my uncle approached the Town Board and Supervisor Meyers and asked if they would be willing to sell us a piece of property back here. The Town Board and Supervisor Meyers looked on it favorably but with one caveat, they said well, we're concerned your, I believe this distance from our property back to these residences is about, I want to say it's about 800 feet, 900 feet, I didn't measure it, but it's quite far, there's two ponds here, there's a little road, dirt road that the Town uses to service these reserve wells that they have back here in the event of a water shortage. So Supervisor Meyers, getting back to my original point, said yes, I'm willing to convey the property to you, it has no use to us, but I'd like to rent it to you for a period of time just to make sure there's no problem, just to make sure your operation doesn't cause any hardship for the people, the residents back here in Ducktown. So we engaged in a lease arrangement with the Town of New Windsor for this 2.35 acres. At that time the property was wooded, so we cleared it, we filled it, we installed Item 4, we graded it, rolled it, compacted it, improved the property so we had a nice, flat piece of land. We used the property just to store the Item 4 after we make it, the influx of raw material from outside sources and our sources on our site is stored about in this area here. We process it, it comes off the conveyer belt, we stack it and we have trucks and we deliver it to people and we sell it. So we engaged in this lease with the Town. It went very well for about three years, more or less, I'm not aware of any complaints--Mike, you would be the

one who would be more aware than I would--with no complaints. After that three year period more or less, my uncle approached Supervisor Meyers and the Town Board for a sale of the property, everybody was in favor of the sale of the property. It's already improved, everything's in good shape. Well, they started to work up contracts and somehow either Mike brought it up or the planning board brought it up--incidentally, Mr. Chairman, before we were allowed to use this property for the storage of the aggregates, as I described, they'd have to, New Windsor Equipment Rentals did appear in front of the planning board to speak to the planning board to get their opinion on it before they even engaged in the lease. That was looked upon favorably at the time we went through the lease and now we're, my uncle and our group, Hudson Valley, we're trying to buy the property, somehow, either Mike picked it up or somebody in the building department picked it up, the R-4 zone line goes right through here, so if we buy the property that we have already improved, bought the loader, spreaded Item 4, cleared the trees, it's an illegal use in the zone.

MR. REIS: And you'd have to go to jail.

MR. ARGENIO: That's right. So we're here looking for an area variance, Mr. Chairman, and we feel it makes sense. And the reason we feel it makes sense is because if you look at the photos in front of you, this is a very old zone line here, very old from, I don't know how far it dates back, but the location of this line is a line on a map, this property here is zoned PI, which is our property and the property to the southeast are separated naturally by a pond or a lake, whatever you'd like to call it, it's a full-time lake, it doesn't dry up in the summertime, the PI zone, Mr. Chairman, and the R-4 zone to the southeast are naturally separated by this lake and this lake, this well house, this well house owned by the Town and this littering of easements that I have highlighted here in

both pink and yellow and as you can see our proposed use, the property we want to buy from the Town for which we do actually have a contract for it, it's not executed because we need to get through this process first, the property which we want to buy from the Town stops short of this easement, so as to not encumber this sewer easement here for the Town. I don't know if it's accurate or not, I have no idea. But as far as the water goes, Mr. McGoey told me this is not active, this water line and pumphouses but they are there for an emergency drought, if the Town ever needs to tap them, if Brown's Pond goes dry or for whatever reason. So this property here, this piece of land that I'm kind of highlighting here, this has no other use, none in the R-4 zone, there's nothing that can be done with it, nothing, because of the easements, because there's no access, this is Town property here, this is a road, this is a road, Mr. Chairman, a dirt road that goes down like this owned by the Town that's accessed through Ducktown. That's why I'm here. I'll answer any of your questions now.

MR. REIS: You've been utilizing this property for three plus years?

MR. ARGENIO: I want to say three years, I'm not sure.

MR. REIS: Your wish is to continue to use it in the same fashion?

MR. ARGENIO: Same manner and fashion it's been used for the past three years.

MR. REIS: This should have been done when they first got involved with it.

MR. BABCOCK: I don't know why that was missed or what it was, but on a lease, it didn't get sent around to all the departments. Once they talked about the sale, they send that all to every department for the sign-off

and that's when we picked it up.

MR. ARGENIO: The check is substantially more thorough when you're talking about a sale.

MR. MC DONALD: Looking at the pictures again on the road this is the zone?

MR. ARGENIO: No. Mr. Chairman, if you would open up picture one, I'm sorry, I neglected to get into that, if you look at picture one, that picture is taken from right here and I'm standing on top of the pile of aggregate looking this way down that road I had described for you. So I'm standing right here about in the center of the property to be, proposed property to be conveyed looking down that road.

MR. MC DONALD: These are the two ponds on either side?

MR. ARGENIO: Correct. You can see how far away they are. I'm saying 800 feet, I didn't scale it and view 2, Mr. Chairman, that you're looking at right now is from on the Town's property looking at the proposed property, you should be looking at a pile of gravel that's covered with snow, unfortunately, it's the time of the year that I took the photograph, that's view one looking down towards the Town's property, that's the pile of gravel, the property line is in here somewhere and there's a couple other views that I have outlined from our property. As it is now, view 3 and view 4 is also from our property as it is now looking at the pile of gravel.

MR. REIS: You haven't had any complaints from your neighbors?

MR. ARGENIO: Nothing. And I had spoke to Mr. Babcock prior to this and he also indicated there was nothing from the residents in the R-4 zone.

MR. REIS: You have already leveled it and put all your materials on it?

MR. ARGENIO: Yes.

MR. REIS: No more taking down trees or vegetation?

MR. ARGENIO: No, that's done.

MR. MC DONALD: Pretty much what it looks like now.

MR. ARGENIO: Correct.

MR. MC DONALD: And you can't go too much further because you're going to be filling that pond, you can't do that.

MR. ARGENIO: Actually, the proposed property line being relocated from here to here will actually be about 200 feet, 250 feet away from the existing pond as it is today.

MR. REIS: Is there any perimeter fencing or any kind of a structure or boundary or anything that's going to prevent you from encroaching on the neighbor's property?

MR. ARGENIO: At this point in time, Mr. Chairman, we have proposed nothing, but surely I think it would be even from a liability standpoint it would be in our interest to consider, our interest more even than the Town's, to consider some type of fence back there.

MR. REIS: Any questions?

MR. MC DONALD: Accept a motion?

MR. REIS: Yes, please.

MR. MC DONALD: Make a motion that we set up a public

hearing for New Windsor Equipment Rentals' request for a variance.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. REIS	AYE

GARY & THERESE LAMICA (04-06)

MR. REIS: Request for 9 ft. side yard setback and 2 ft. rear yard setback (48-14, A(1b) for existing shed and interpretation for single-family home with two kitchens in single-family zone all at 1 Buttermilk Drive in a CL-1 zone.

MR. KELSON: Good evening, my name is Todd Kelson, I'm an attorney here in New Windsor representing Mr. and Mrs. Lamica. The premises in question were purchased by them at the end of April of this year. On the premises were the shed that we're referring to which we were advised on information and belief that it existed on the property for more than ten years. The contract called for the sellers of the property to obtain the variance but they have elected to close prior to that variance being obtained so as to not lose a very advantageous interest rate this summer. There were two sets of, there's two area variances we're seeking, we're seeking a two foot side yard and, I'm sorry, a 9 foot side yard and a two foot rear setback. We have in front of you I think it's a copy of the survey depicting both existing setbacks. The improvement's been there for more than ten years, there's been no appreciable impact upon the neighborhood. There's no, as you can see, the variance cannot be, the relief cannot be obtained in any other way, there's really no room to put the shed, it's not a substantial variance, they'll have no impact on the neighborhood, not self-created, we purchased it that way. For that reason, we ask that the variance been granted. The other item in the application this evening there's a request for an interpretation. The building department has taken the position that there is a separate dwelling unit within the premises. The applicant disagrees with that. There is no separate dwelling unit in this building, but what there are are some cabinets, there's no stove, there's no sink, there's no plumbing, there's no nothing. But there is some

kitchen cabinets down there and the building department feels that there should be a clarification that there is nothing but a single dwelling on this property. The applicant takes no issue with that and asks that this board concur that there is nothing but a single family dwelling. Mr. Lamica is here in the audience if you have any questions.

MR. REIS: As far as you know, the shed is not located on any easements?

MR. KELSON: No, sir.

MR. MC DONALD: No excessive runoffs?

MR. KELSON: No, been there. How did you do this summer? There was nothing, there's no problem.

MR. MC DONALD: Good grades in the back?

MR. LAMICA: Yes.

MR. MC DONALD: The two kitchens, Mike, there's no stove, no sink.

MR. BABCOCK: I trust what Mr., what the gentleman is telling us tonight. I personally was not there, so I don't know, one of my guys was there. And since they're coming here tonight, we always, we really would like them to go on record which they have saying it's a one-family house and it's got some kitchen cabinets downstairs, they intend to use it as a one-family house and we're more than fine with that.

MR. REIS: No stove?

MR. KRIEGER: Always been a one-family house and will always be a one-family house?

MR. KELSON: That's exactly correct.

MR. REIS: No stove, no plumbing?

MR. KELSON: No plumbing.

MR. MC DONALD: One meter in the house?

MR. KELSON: Yes.

MR. REIS: The fact that the dwelling is located on a corner here is requiring the setbacks, right, Mike?

MR. BABCOCK: The shed is a little closer to the property line and Mr. Chairman, as usual, we, the shed is farther than what these measurements are, but at the board's direction, we rounded the numbers off, it was, I don't have them in front of me.

MR. KELSON: 1.1.

MR. BABCOCK: We just said it was one foot rounded and they need a 9 foot variance.

MR. REIS: Any other questions?

MR. RIVERA: Have you had any complaints formally or informally?

MR. LAMICA: No.

MR. KELSON: No.

MR. REIS: Accept a motion.

MR. RIVERA: Yes, I make a motion that we set Gary and Therese Lamica for their requested 9 foot side yard setback and two foot rear yard setback for existing shed and interpretation for single family home with two kitchens in a single family zone at 1 Buttermilk Drive.

MR. REIS: Can I make an amendment, can we take the kitchens out since it's just cabinetry?

MR. BABCOCK: Sure.

MR. MC DONALD: Interpretation, we're going to cross that right off?

MR. REIS: Right.

MR. KRIEGER: Wait a minute cause you're just taking out the two kitchens reference but you're leaving in the interpretation.

MR. REIS: Make an interpretation that it's a single family home, we're not saying that there's two kitchens.

MR. MC DONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. REIS	AYE

PUBLIC HEARINGS:

ANDREW COFFEY (03-59)

Mr. Andrew Coffey appeared before the board for this proposal.

MR. REIS: Request for 23 ft. front yard setback for existing front deck (Use: E-8 bulk tables) at 233 Spruce Street in an R-4 zone. Andrew, tell us what you want to do.

MR. COFFEY: We went through that with the preliminary hearing.

MR. REIS: Are you Andrew?

MR. COFFEY: Yes.

MR. REIS: Tell us.

MR. KRIEGER: You have to tell them over again.

MR. COFFEY: Okay, yeah, the deck that needs the variance is like 4 feet out from the front of the house and it's been there 20 years. And I was dealing with Frank, the inspector, I had to make a modification to it but I'm asking for a variance to keep the deck the same size, it's been there for about 20 years.

MR. KRIEGER: And that deck doesn't visually cause the building to look like it's closer to the road than other neighboring buildings, it looks about the same?

MR. COFFEY: Yes.

MR. MC DONALD: Looking at the pictures here, if you didn't have the deck, you could have a falling hazard when you came out of the building?

MR. COFFEY: Yeah.

MR. RIVERA: Any complaints formally or informally?

MR. COFFEY: No.

MR. MC DONALD: Not over any easements?

MR. COFFEY: No.

MR. REIS: Are the pictures that we're looking at, Andrew, is that the existing deck now?

MR. COFFEY: Yes.

MR. KRIEGER: Doesn't divert the flow of water drainage or create the ponding or collection of water?

MR. COFFEY: No.

MR. RIVERA: Any mailings or open it to the public?

MR. REIS: Let's open it to the public. We'll open it up to the public, anyone that wishes to speak on this one way or the other? Anybody? We'll close the public hearing.

MS. MASON: On the 13th of January, 69 addressed envelopes were mailed out with the public hearing notice.

MR. REIS: Any responses?

MS. MASON: I'm sorry, no, there wasn't.

MR. MC DONALD: Accept a motion?

MR. REIS: Please.

MR. MC DONALD: I make a motion that we grant Mr.

Coffey his request for 23 foot front yard setback for his existing front deck as 233 Spruce Street.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. REIS	AYE

NICHOLAS RONSINI, JR (04-01)

Mr. Nicholas Ronsini, Jr. appeared before the board for this proposal.

MR. REIS: Request for 7 ft. maximum building height (48-14 A(1)(2) for proposed garage at 546 Temple Hill Road in an R-4 zone.

MR. RONSINI: Good evening.

MR. REIS: Tell us what you want to accomplish.

MR. RONSINI: I want to erect a pole barn type garage on my property to house some land equipment that I use, a plow, tractor and I want one bay to house my RV travel trailer and I need a variance for extended height. Without the extended height, I wouldn't be able to get the RV enclosed.

MR. MC DONALD: Be nice to get it out of your driveway.

MR. RONSINI: Exactly.

MR. MC DONALD: This pole barn is not going to be over any easements?

MR. RONSINI: No.

MR. MC DONALD: Sewer, water anything like that?

MR. RONSINI: No.

MR. MC DONALD: How high is it going to be?

MR. RONSINI: Twenty-two feet at the peak, 40 x 30.

MR. KRIEGER: Other than height, it will be similar in size and appearance to other structures in the neighborhood?

MR. RONSINI: Yes, it's going to be right alongside my home, I think on the schematic I gave you there you can see the driveway, my house is on one side of the driveway and this proposed building is going to be on the opposite side and we're about 4 or 500 feet off the main highway which is Temple Hill Road, so it's not going to be even hardly seen from the street.

MR. RIVERA: Will you be cutting down any trees or vegetation?

MR. RONSINI: There's only one tree that I have to take out, just one a small tree or a bush really but--

MR. REIS: I'd like to open this up to the public, anybody like to make any comments about this hearing? Anyone? Close the public hearing. In constructing this, Nick, will you be diverting the flow of water?

MR. RONSINI: No, there's no problem with water. I have drainage right in front of the building that's going to be piped.

MR. MC DONALD: All pretty flat back there anyway.

MR. RONSINI: Yes, real flat.

MR. REIS: Any other questions?

MR. RIVERA: Accept a motion?

MR. REIS: One second.

MS. MASON: On the 13th day of January, 32 addressed envelopes were mailed out public hearing notice with no responses.

MR. REIS: Thank you. Accept a motion.

MR. RIVERA: Yes, Mr. Chairman, I move we grant Mr. Nicholas Ronsini, Jr. the requested for the 7 foot maximum building height for the proposed garage at 546 Temple Hill Road in the R-4 zone.

MR. MC DONALD: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. REIS	AYE

GOLDSTAR REAL ESTATE (04-03)

Mr. Joe Fontana appeared before the board for this proposal.

MR. REIS: Request for 2.7 ft. side yard setback for proposed single family home (48-12; R-1, column F-5) at 2 Pieter's Court in an R-1 zone.

MR. FONTANA: I'm requesting a side yard setback of 3 feet, we need a boundary line variance, it's a large piece of property 6 acres but we did a mistake and we were a few feet over.

MR. MC DONALD: Foundation is already poured?

MR. FONTANA: Yes, it's very wide, but we were near the line, didn't realize how close they were.

MR. REIS: Open it up to the public. Anybody like to comment? Please identify yourself.

MS. MALEAVY: Hi, my name is Barbara Maleavy (phonetic), I have lot 8 of the subdivision, I believe it's next to that property.

MR. FONTANA: Are you living in the house?

MS. MALEAVY: I haven't built mine, I just wanted to make sure it wasn't going to be where the drainage easement's going through.

MR. FONTANA: No, it's not near that and I'm on the other side with a house already existing, you couldn't be there, you'd have to be--

MR. BABCOCK: This is lot 8, this is the foundation that's in there.

MS. MALEAVY: This is set back, I just wanted to make

sure because there's going to be water going through there.

MR. BABCOCK: This corner right here is just over the line, see the line.

MR. FONTANA: That's the variance request.

MS. MALEAVY: For your circle there, okay, I just want to make sure that you weren't in the way.

MR. FONTANA: No, I'm not on that side.

MR. BABCOCK: She's on the opposite side of this area.

MR. REIS: He's giving you more room.

MR. KRIEGER: Now that you understand the situation, do you have any opposition to this variance request? Are you opposed to it?

MS. MALEAVY: Well, I don't know what questions to ask I just where the septic is or anything like that how close is that to the line, I'm sure the Town is going to put it in a safe--

MR. FONTANA: It's behind the house that's next to me, it's not even near my house.

MR. KRIEGER: Even if he were granted an area variance here, it would not relieve him from any other obligations of the law. So in terms of the siting of sewage and water, those are separate laws that he gets no relief from here.

MR. BABCOCK: It's completely on the opposite side of the lot from her house.

MS. MALEAVY: And this house is facing this way?

MR. BABCOCK: Yes, instead of putting it here, they put it here.

MS. MALEAVY: This is going to be--

MR. BABCOCK: That's you.

MS. MALEAVY: And I will be speaking with you shortly, okay, so it doesn't--

MR. REIS: You're okay with this request?

MS. MALEAVY: Yes, yes, I just wanted to make sure it wasn't on our property.

MR. BABCOCK: On her lot, Mr. Chairman--

MS. MALEAVY: There's a low area that it's going to require drainage through, I just wanted to make sure that wasn't going to change.

MR. BABCOCK: He has a buildable area from her lot of 40 feet and he's 95.5 feet so he's way clear from her lot.

MS. MALEAVY: Cause that area along the property line can't be altered at all.

MR. REIS: Right. No intention of doing that?

MR. FONTANA: No, not at all.

MR. REIS: You're comfortable?

MS. MALEAVY: Yes.

MR. REIS: Thank you very much. Close the public hearing. Any other questions, folks?

MR. MC DONALD: Letters.

MS. MASON: On the 13th of January, 13 envelopes containing the notice of public hearing were mailed out with no response.

MR. REIS: Thank you. Motion?

MR. MC DONALD: Make a motion that we grant Goldstar Real Estate request for the 2.7 foot side yard setback for the proposed single family home at 2 Pieter's Court in an R-1 zone.

MR. BABCOCK: Mr. Chairman, last meeting at the preliminary the chairman asked me to change that 2.7 to 3 feet, he asked me to round that off so all the numbers have been changed to a three foot variance just so if in case it's off just a touch, we have no problem.

MR. REIS: Thank you.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE
MR. REIS	AYE

MR. REIS: Motion to adjourn.

MR. MC DONALD: So moved.

MR. RIVERA: Second it.

ROLL CALL

MR. RIVERA	AYE
MR. MC DONALD	AYE

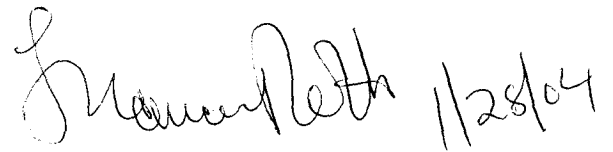
January 26, 2004

42

MR. REIS

AYE

Respectfully Submitted By:

A handwritten signature in cursive script, appearing to read "Frances Roth", followed by the date "1/28/04" written in a similar cursive style.

Frances Roth
Stenographer